

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES
INBOUND MARKET DOMINANT MULTI-SERVICE AGREEMENTS
WITH FOREIGN POSTAL OPERATORS

KOREA POST - UNITED STATES POSTAL SERVICE BILATERAL
AGREEMENT (MC2010-35)
NEGOTIATED SERVICE AGREEMENT

Docket No. R2013-9

MOTION FOR PARTIAL RECONSIDERATION OF ORDER NO. 1864

(November 6, 2013)

In Order No. 1864, the Commission approved the addition of an agreement with Korea Post to the classification of Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators. In its order, the Commission noted the comments of the Public Representative recommending that the “Commission clarify the baseline agreement for this product or provide guidance to the Postal Service for identifying the baseline agreement for purposes of functional equivalency comparisons in future dockets.” Id. at 6.

In response to the Public Representative’s recommendation, the Commission directed that the Postal Service address the issue of identifying the baseline agreement in its next filing of an agreement it believed to be functionally equivalent to those in this classification. Id. at 10. More specifically, the Commission instructed the Postal Service that “in its next filing concerning this (or successor) product, the Postal Service is to address the continued appropriateness of the reference in the MCS to the original agreements as baseline agreements and propose alternatives (if warranted).” Id. at 8.

The Postal Service appreciates the opportunity to address this issue and propose appropriate alternatives for identifying baseline agreements to be used for functional equivalency comparisons in this product classification. However, the Postal Service suggests that the issue need not be overcomplicated in light of the experience that the Postal Service and the Commission have accumulated in the years since the first agreements were included in this product classification. The request to deal with this issue immediately and separately from the request to add the next agreement to this product classification stems from an awareness that three agreements in this grouping have expiration dates of December 31, 2013 and may be renegotiated for implementation in January 2014. Dealing with the issue in the “next” of these dockets will not be useful for the others filed shortly thereafter and could compromise the ability of the Postal Service and the Commission to complete the conditions precedent to implementation of the agreements by their anticipated effective dates

Therefore, the Postal Service requests that the Commission reopen this docket and dispense with the question with the benefit of the observations the Postal Service offers below.

Background

Prior to its experience with international negotiated service agreements for competitive products and GEPS in particular, the Commission determined in Order No. 43 that each such agreement would be considered a separate “product.”¹ The Commission noted that products considered to be functionally equivalent to one another

¹ PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. RM2007-1, October 29, 2007, at 57.

could, though, be grouped together.² Consistent with the Commission's regulations, the Postal Service filed a request to add the Global Expedited Package Services (GEPS) product to the competitive product list and subsequently has presented each negotiated service agreement falling within the same market and cost characteristics of the GEPS product to be added to the grouping as a functionally equivalent product. Without exception, these agreements were all found to be functionally equivalent to one another, despite the evolution of the contract terms of the agreements.

In Order No. 43, the Commission acknowledged that commenters to the proposed rules concerning negotiated service agreements raised legitimate concerns that the process for adding these agreements to the mail classification schedule should not be overly cumbersome,³ but the Commission lacked experience at that time with such agreements and, in particular, with international customized mail agreements.⁴ The Commission advised that with greater experience, it might be appropriate to group functionally equivalent negotiated service agreements as a single product, if it could be shown that they shared the same market and cost characteristics.⁵ The Commission also acknowledged that although its regulations for competitive ratesetting attempt to strike a balance among the divergent interests of mailers, modifications to the rules might be necessary as experience with them is gained.⁶

The Postal Service believes that these observations also apply to the circumstances now before the Commission in consideration of the Inbound Market Dominant Multi-Service Agreements With Foreign Postal Operators product grouping.

² Id. at 58.

³ Id. at 62.

⁴ Id. at 57, n.22.

⁵ Id. at 58.

⁶ Id. at 56.

With the three years of experience intervening between the classification of the first of these agreements and the most recent one, the Commission has learned much and should now be able to use what it has gained to promote greater efficiency in the regulatory process.

Identifying The Baseline Agreement

The Postal Service submits that identification of a baseline agreement with which to compare an agreement proposed to be added to a product grouping that already contains a number of functionally equivalent agreements need not be limited to a single agreement. The original agreement added to the competitive or market dominant products list within a classification by default is the baseline agreement to which the next agreement must be compared to determine whether there is a basis to consider them as functionally equivalent. Once an additional agreement is added to a product grouping as functionally equivalent to the original agreement in that grouping, it is considered on equal footing as an exemplar of the classification. It cannot be said that one of these agreements is more or less functionally equivalent to the original baseline agreement. It can be said, however, that the terms of one agreement in the product grouping are more similar to those of another than to the original agreement.

Thus, it seems appropriate to the Postal Service to use the currently existing agreement with a foreign postal operator as the baseline for comparisons of agreements that are meant to continue the basic conditions of the existing agreement for a new term. This would hold true even when new products or services might be added to the proposed new agreement.

In general, the Postal Service observes that the classification at issue in this docket typically includes one or more flows of inbound letter post, in the form of letters, flats, small packets, parcels, bags, and International Registered Mail. The agreements within the classification may also include ancillary services such as International Business Reply Service or other service features and product enhancements. All of the agreements serve the same function, which is to provide pricing that deviates from the default rates of the Universal Postal Union (UPU), which are negotiated quadrennially and in the context of reaching a single agreement that applies to all 192 of its members. Additionally, all of these agreements are with the designated postal operators of the foreign countries with which the Postal Service is exchanging mail because of its UPU obligations. If changes to the agreement will have no effect on its costs characteristics or its market characteristics, finding that it is functionally equivalent to its predecessor would seem to make the exercise more efficient for all involved.

In cases where there is no predecessor agreement, another means of identifying an appropriate baseline agreement for functional equivalency would have to be applied. In such cases, the Postal Service submits that comparison of the new agreement with existing agreements in the product grouping, with a focus on the products included in the agreements, would be the most appropriate means of identifying a baseline agreement for comparison. It is essentially in this way that the Postal Service makes its initial determination concerning whether to seek to have the new agreement included in an existing product grouping as functionally equivalent or to file the agreement separately, because it is distinct in a way that materially affects its inclusion in already existing classifications. When it appears to the Postal Service that an agreement with a

foreign postal operator deviates from the existing classifications available in the MCS, it files a request with the Commission to change the MCS to add a new product to either the competitive or market dominant products list. This practice continues. Thus far, the Commission and the Public Representatives assigned to the dockets established under MC2010-35 have agreed in all cases that the agreements proposed to be added as functionally equivalent have, indeed, been functionally equivalent and properly included in the product grouping.

Therefore, the Postal Service respectfully requests that the Commission reconsider numbered paragraph 7 of Order No. 1864 and the creation of any additional product grouping that would simply replicate this one. It seems that there is no need to create a second iteration of the Inbound Market Dominant Multi-Service Agreements With Foreign Postal Operators and that doing so would unnecessarily add to the Mail Classification Schedule. Introducing new groupings for a set of new upcoming bilateral instruments would simply introduce a measure of complexity that would serve no practical purpose.

Conclusion

For the reasons discussed above, the Postal Service requests that the Commission reopen PRC Docket No. R2013-9, resolve the issues related to identifying the baseline agreement for functional equivalency as suggested above, and modify Order No. 1864 to delete paragraph 7 and instead order that identification of the baseline agreement in future dockets under MC2013-35 should be consistent with the discussion herein.

Respectfully submitted,
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